

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAY 23 2005

OFFICE OF
MANAGING DIRECTOR

FILE

Mat Lyman, President
Lyman Bros.
10288 S. Jordan Gateway
Suite K
South Jordan, UT 84095

Re: Lyman Bros., Inc.
Request for Waiver of FYs 1995 - 2002 Regulatory
Fees
Fee Control No. 00000RROG-04-075

Dear Mr. Lyman:

This is in response to your request dated August 29, 2002, and supplemented by correspondence dated August 27, 2004, filed on behalf of Lyman Bros., Inc. (Lyman Bros.) for a waiver of the regulatory fees for fiscal years (FYs) 1995 through 2002 with respect to twenty licenses for mobile very small aperture terminal (VSAT) satellite systems.

You recite that in 1992, Lyman Bros. received thirty licenses for mobile VSAT satellite systems. You state that in 1995, after deciding that it could not afford to pay the regulatory fees for all of the licenses, Lyman Bros. paid the FY 1995 regulatory fee for only ten of the thirty licenses. You state that Lyman Bros. "wrote a letter [dated September 19, 1995, to the Office of Managing Director (OMD) (*September 19, 1995 Lyman Letter*)] indicating [the company's] . . . desire to cancel" the other twenty licenses and "assumed" that Lyman had thereby cancelled them. In response, on October 5, 1995, OMD advised Lyman Bros. that given the company's inability to pay the regulatory fee, it had "the option to apply for a waiver of the fee based on financial hardship."¹ OMD explained that the request should include information such as a balance sheet and profit and loss statement for the last two years of operation, and a cash flow projection for the next twelve months, as well as a list of the highest paid employees, other than officers, and the amount of their compensation, plus any other financial information that would

¹ Letter from Thomas M. Holleran, Deputy Associate Managing Director for Operations, OMD, FCC, to Mat Lyman (dated Oct. 5, 1995) (*October 1995 OMD Letter*).

support the request.² OMD provided the address to which the request should be mailed and stated that the request should be directed to OMD. OMD also advised Lyman Bros. that it was "liable for the annual fee unless specifically granted a waiver by the FCC."

You state that Lyman Bros. was "not aware of any further correspondence on the matter until March 2001 when we received a letter for each of the twenty licenses indicating that we were past due in paying the fees for 2000." You state that Lyman Bros. then sent a letter to OMD "indicating we understood these licenses to be canceled." You assert that in May of 2002, Lyman Bros. received two "more sets of letters for the licenses so we wrote on May 13, 2002 and May 30, 2002 explaining our situation" and, in August of 2002, you met with Commission staff to discuss the matter further. You assert that Lyman Bros. "assumed the licenses were canceled" in 1995 "since we heard nothing from 1995 until 2002." You state that "it is evident we did not follow proper procedure in canceling the twenty licenses" and that the licenses expired on May 15, 2002. Our records confirm that the licenses expired on May 15, 2002.

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby. See 47 U.S.C. §159(d); 47 C.F.R. §1.1166; see also *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), on recon., *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761 (1995) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs).

As an initial matter, we note your concession that Lyman Bros. failed to follow proper procedures to cancel the licenses at issue here in accordance with the Commission's rules and the licenses expired on May 15, 2002. Further, although OMD advised Lyman Bros. in 1995 as to fee waiver procedures, we find that Lyman Bros.' subsequent communications with OMD in 2001 and 2002 regarding the company's intention to cancel the instant licenses do not constitute a request for waiver of the regulatory fees under the Commission's rules.³ A waiver request was not filed until August 29, 2002. Therefore, with respect to your request for waiver of the regulatory fees for FYs 1995

² The documentation that OMD identified as necessary to support a waiver of the regulatory fees on the grounds of financial hardship is based on Commission policies as set forth in *Implementation of Section 9 of the Communications Act, Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62 (1995); see also *id.* at 12762 (to support a claim of financial hardship, the petitioner must "show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

³ See generally 47 C.F.R. §1.1166(a) (requiring that requests for waiver of the fee rules "be filed as a separate pleading [(e.g., separate from a request to cancel a license)] and clearly marked to the attention of the Managing Director. Any request that is not filed as a separate pleading will not be considered by the Commission.").

through 1999, we find that the request for relief, filed with the Commission on August 29, 2002, long after the close of FYs 1995 through 1999, does not provide a basis for relief or otherwise warrant any further consideration. We therefore deny your request for waiver of the regulatory fees for FYs 1995 through 1999.⁴

With respect to your request for a waiver of the regulatory fees for FYs 2000 through 2002, section 1.1166(c) of the Commission's rules, 47 C.F.R. §1.1166(c), requires that

[p]etitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. . . . Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

Your request for waiver of the FYs 2000 through 2002 regulatory fees included neither the required fees nor a petition to defer payment due to financial hardship, supported by documentation of the financial hardship. As discussed above, Lyman Bros. was specifically advised as to the documentation required to support a waiver request based on financial hardship. We therefore dismiss your request for waiver of the FYs 2000 through 2002 regulatory fees.

Furthermore, although Lyman Bros. may not have received any communication from OMD from the time of the *October 1995 OMD Letter* until the company received the past due notices in March 2001, this provides insufficient grounds for a grant of your request for relief. Commission licensees are expected to know and understand the rules governing their licenses, including the procedures for canceling unwanted licenses, which you concede that you did not follow, and the requirement to pay the relevant fiscal year regulatory fees. Every year the Commission releases a report and order regarding the assessment of regulatory fees for the fiscal year in accordance with the requirements of

⁴ See Letter from Mark A. Reger, Chief Financial Officer (CFO), OMD, FCC, to C. Michael Curry, Vice President, Hispanic Keys Broadcasting Corp (dated Aug. 27, 2002) (denying untimely request for regulatory fee relief for FYs 1997, 1998, and 1999 because the request was filed on March 14, 2002, "long after the fiscal years in question"); Letter from Mark A. Reger, CFO, OMD, FCC, to Rodney L. Joyce, counsel for Network Access Solutions Corporation (Aug. 11, 2004) (denying untimely request for regulatory fee relief for FYs 2000 and 2001 because the request was filed on April 2, 2004, "long after the fiscal years in question").

Even if your request for relief with respect to FYs 1995 through 1999 were not subject to denial as untimely, section 1.1166(c) would provide a basis for dismissal of your request with respect to these fiscal years because Lyman Bros. did not pay the regulatory fees accompanied by FCC Form 159 for these years or file a petition to defer payment on the grounds of financial hardship, supported by documentation of financial hardship. See discussion below.

the Communications Act.⁵ In addition, the Commission takes great care to inform its licensees of the due dates, amounts of the fees, and payment methods and deadlines on its website.⁶ Further, in its *October 1995 OMD Letter*, OMD advised Lyman Bros. that it was "liable for the annual fee unless specifically granted a waiver by the FCC." Finally, although the licenses at issue here expired on May 15, 2002, Lyman Bros. held the licenses on October 1, 2001 and therefore a regulatory fee was owed for FY 2002.⁷ We therefore deny your request for a waiver of the regulatory fees for FYs 2000 through 2002.

The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that Lyman Bros. met this obligation for FYs 1995 through 2002.

Payment of the late charge penalties, as well as the regulatory fees for FYs 1995 through 2002 is now due. The regulatory fees and the associated late charge penalties should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this


⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2002*, 17 FCC Rcd 13203 (2002), 67 Fed. Reg. 46298-01; *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525 (2001), 66 Fed. Reg. 36177-01; *Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, 15 FCC Rcd 14478 (2000), 65 Fed. Reg. 44576-01.

⁶ See Public Notice, *FY 2002 International and Satellite Services Regulatory Fees*, 2002 WL 1782100 (Aug. 5, 2002); Public Notice, *Extension of [2001] Fiscal Year Regulatory Fee Filing Window*, 2001 WL 1078406 (Sept. 17, 2001); Public Notice, *Assessment and Collection of Regulatory Fees for Fiscal Year 2000* Public Notices for Immediate Release, 2000 WL 1051761 (Aug. 1, 2000) (stating that the public notices identifying the fee amounts of each fee category will be available on or after August 2, 2000 at www.fcc.gov/fees/regfees/2000regfees).

⁷ See Public Notice, *FY 2002 International and Satellite Services Regulatory Fees*, 2002 WL 1782100 (Aug. 5, 2002) (for FY 2002, entities holding VSAT system authorizations as of October 1, 2001, are subject to regulatory fee); see also *Assessment and Collection of Regulatory Fees for Fiscal Year 2002*, 17 FCC Rcd 13203 (2002).

letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mark A. Reger
Chief Financial Officer

Enclosure